

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3879 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
Nos. 1 & 2 Yes.
Nos. 3 to 5 No.
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RAJENDRA BACHUBHAI RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner
MR.NIGAM SHUKLA, Addl.Public Prosecutor for
Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/10/96

ORAL JUDGEMENT

Through this Special Civil Application under Article 226 of the Constitution of India the petitioner has challenged the order of detention dated 12.4.1996 passed by the Commissioner of Police, Ahmedabad City under the provisions of Prevention of Antisocial

Activities Act, 1985. The order of detention was executed on 13.4.1996 and since then the petitioner is under detention lodged in the Rajkot District Jail, Rajkot. This Special Civil Application was filed on 4.6.1996 and on 5.6.1996 Rule returnable on 24.6.1996 was issued and an affidavit-in-reply dated 25.9.1996 has been filed by the Detaining Authority.

The grounds of detention which were supplied to the detenu-petitioner along with the detention order show that the petitioner and his associates are engaged in sale of country made liquor in the area of Dani Limda Police Station in Ahmedabad City and he is carrying on antisocial activities. Two Criminal Cases No. 55/96 and 60/96 under the Prohibition Act were under investigation at the time when the detention order was passed and in Criminal Case No. 55/96, the allegation is with regard to 600 liters of country liquor worth Rs.15,000/- and in Criminal Case No. 60/96, 32 liters of country liquor. The Detaining Authority has referred to the consequences of latthakand and has expressed that on account of the petitioner's antisocial activities and dealings in country liquor there was a possibility of Latthakand. The Detaining Authority has noted that the petitioner is a known bootlegger and two witnesses had made statements with regard to the petitioner's antisocial activities. One of the witnesses has stated that on 19.3.1996 in the morning at about 8.30 a.m. when the witness was at his home the petitioner and his associates approached him with a stock of country liquor to store the same in the house of the witness and when the witness declined the petitioner got enraged and slapped him, threatened him and dragged him to the kacha road leading to Dargah and detained the witness. The witness cried for help, many people assembled there. The petitioner took out the weapons and threatened the people with his associates and therefore the members of the public became helter skelter and their daily life was disturbed and an atmosphere of terror was created. The other witness had made a statement that on 28.3.1996 in the after noon at about 3.30 p.m. the witness was going with his vehicle near Beharampura, Halludia Hanuman Char Rasta and at that time the petitioner with his associates standing there, stopped the witness and asked him to accompany him to bring the liquor from village Gyaspur. The witness did not agree to accompany the petitioner and therefore the petitioner got enraged, he threatened the witness and took him out of the vehicle and he was publicly beaten. The witness raised alarm as a result of which the people gathered but the petitioner with his associates chased them with naked weapons resulting the people into helter

skelter and thus created an atmosphere of terror. The Detaining Authority has further recorded that two of the members of the public had supported the narration of above incident made by two witnesses and they knew the petitioner very well. It has also been noted that the petitioner is a headstrong person and has been beating innocent persons in public, was threatening the people with deadly weapons and due to fear no body was prepared to file an open complaint and they have requested to keep their identity secret for the reasons of security being frightened of him. The fear of the witness was found to be genuine after due investigation and therefore their identity has been withheld under section 9(2). It has also been recorded by the Detaining Authority that in the facts of this case the question of petitioner's exterrnent was also considered but it was not found to be adequate step so as to prevent the petitioner from carrying on his antisocial activities and therefore the order of detention was necessary and accordingly the order of detention was passed.

The learned counsel for the petitioner has challenged the detention order on the following grounds :

- [1] The Detaining Authority has not supplied any details of papers with regard to Latthakand.
- [2] The details of the associates had not been supplied despite demand.
- [3] Privilege claimed by the Detaining Authority under section 9(2) was not genuine,
- [4] Even if the entire material relied upon by the Detaining Authority is considered it is not a case of breach of public order and at the most it can be said to be a case of breach of law and order.

In support of the ground that it is not a case of breach of public order, the learned counsel for the petitioner has placed reliance on the following decisions :

- [i] AIR 1989 (SC) Pg.491.
Piyush Kantilal Mehta vs. Commissioner of Police,
Ahmedabad City and Another.
- [ii] 1995(2)GLH Pg.874.
Amrat Ramabhai Vaghari Vs. Commissioner of
Police, Ahmedabad & Others.
- [iii] 1992(2)GLR Pg.1360.
Shamjibhai Manjibhai Patel Vs. Commissioner of
Police, Ahmedabad.
- [iv] 1995(3) SCC Pg.237.

Mustakmiya Jabbarmiya Shaikh Vs. M.M.Mehta,
Commissioner of Police & Others.
[v] Unreported decision of this Court rendered in
Special Civil Application No. 3874 of 1996 on
23.8.1996.

In the affidavit-in-reply filed by the Detaining Authority while referring to the bootlegging activities of the detenu it has been stated that sponsoring authority had sent proposal on 11.4.1996 to the Detaining Authority with Special Messenger and thereupon the Detaining Authority had directed the Superintendent of Police, 'J' Division, Ahmedabad City for verification of whereabouts of all the witnesses, their status in the society along with the truthfulness and genuineness of the fear expressed by them and making request to keep their identity secret from the detenu. It has been stated by the Detaining Authority that the Superintendent of Police, 'J' Division had called upon the witnesses personally on 11.4.1996 and 12.4.1996 and after verification, the papers were returned to the Detaining Authority along with the report on 12.4.1996 itself through Special Messenger. According to the Detaining Authority the fear expressed by the witnesses was genuine and looking to the statements of the witnesses and the antecedents of the detenu and his antisocial activities along with his potential to carry-on the unhealthy activities disturbing the public order, an overall view of the matter was taken and after proper application of mind the detention order was passed on 12.4.1996. It has been stated that vital material which had been considered by the Detaining Authority had also been supplied to the detenu and the identity of the witness was withheld under section 9(2) of the PASA Act. Identity of the witnesses has been withheld in the larger public interest. It has been further stated that the petitioner is engaged in the activities of bootlegging and he along with his companions forces innocent persons of public to store the liquor and it has been submitted that the present case could not be termed as breach of law and order and it was a case of breach of public order. It has been further stated that the representation made through the petitioner's Advocate sent by registered post on 27.5.1996 was received in the office of the Detaining Authority on 4.6.1996 and the same was rejected on 5.6.1996 and it was forwarded to the State Government on 5.6.1996 and the petitioner was informed about the rejection of this representation vide letter dated 5.6.1996. The detention order is sought to be defended on the ground as aforesaid and Mr.Nigam Shukla has also placed reliance on an unreported decision of this court

rendered in Special Civil Application No. 1432 of 1996
decided on 29.3.1996.

I have considered the submissions made on behalf of both the sides. So far as the non supply of the details with regard to the Latthakand is concerned it may be straight way observed that the reference has been made to the Latthakand only by way of narrating consequences of the unauthorised sale of the country liquor. It has not been alleged by the Detaining Authority against the petitioner that the petitioner was involved in Latthakand. All that has been observed by the Detaining Authority is that if the petitioner keeps engaged in antisocial activities of unauthorised sale of country liquor, incident like latthakand may be repeated. Keeping in view the context in which the reference has been made to the latthakand in the grounds of detention, I do not find that it was at all necessary for the Detaining Authority to have supplied the papers with regard to latthakand to the petitioner. It may be clarified that the latthakand has been referred in the context of some unfortunate event which is said to have happened about 3 to 4 years back in Ahmedabad City and about 10 to 12 years back in Kachchh-Bhuj wherein there was a high toll on account of the consumption of the country liquor and in fact it has been stated by Mr.Nigam Shukla himself that the Detaining Authority nowhere said that the petitioner himself was involved in Latthakand. In this background, I do not find that bald reference to latthakand and its consequences has anything to do with the grounds of petitioner's detention and merely because reference to this word has been made as a narrative part, to show the consequences of such latthakand, it was not obligatory on the part of the Detaining Authority to supply any documents relating to latthakand to the petitioner and it cannot be said that any prejudice has been caused to the petitioner's right of representation against his detention and therefore, this contention raised by the petitioner has no force and same is hereby rejected.

The ground of non-supply of the details and names of the petitioner's associates despite the demand is hardly sufficient in the facts of the present case and the petitioner has failed to show that any prejudice has been caused to his right of representation on account of non-supply of details of the associates and therefore this contention raised on behalf of the petitioner fails.

The privilege claimed by the Detaining Authority under section 9(2) under PASA is based on the

verification of the statement of the witnesses and after verification of the whereabouts of the witnesses and after considering the statements made by the witnesses the Detaining Authority has come to the conclusion that on account of the terror of the petitioner and the fear psychosis created by the petitioner the apprehension of the witnesses was genuine and it was not found to be in public interest to disclose their identity. This opinion formed by the Detaining Authority cannot be said to have been found without any material and in my opinion the privilege claimed under section 9(2) of the PASA Act is genuine and therefore, this contention raised on behalf of the petitioner also fails.

Coming to the last but not the least submission made on behalf of the petitioner that it was not a case of breach of public order and that at the most it can be said to be a case of breach of law and order, the principles which have been laid down in the several pronouncements are required to be considered in some detail.

In the case of Piyush Vs. Police Commissioner, Ahmedabad (*supra*) before the Supreme Court the allegation was that the petitioner in that case was a bootlegger and that he was caught red handed with English wine with foreign marks without any legal pass or permission to do so and that he was caught while shifting 296 bottles of foreign liquor in an Ambassador Car without any pass, permit or licence and such allegations were found to have no bearing on the question of maintenance of public order. After considering the definition of bootlegger as given in Section 2(b) of the provisions of PASA Act, 1985 and after considering the provisions of section 3 including the explanation under sub-section 4 of section 3 that the public order shall be deemed as likely to be affected adversely inter alia if any of the activities of any person referred to in sub-section 4 of section 3 directly or indirectly is causing or likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof and as a grave or widespread danger to life, property or public health. Feeling of insecurity amongst the general public or any section thereof and a grave or widespread danger as such cannot be taken to adversely affect the maintenance of public order. The Supreme Court has considered the grounds such as the petitioner and his servants and associates indulging in the use of force and violence, beating innocent citizens by which an atmosphere of fear is created and that by indulging in such activities whether the detenu is causing hindrance to the

maintenance of public order and further allegations of showing dangerous weapons to the citizens and thereby creating an atmosphere of fear. It was observed by the Supreme Court that these allegations were very general in character, and apart from some minor incident of beating by the petitioner the witnesses had alleged that the petitioner was high-headed and fierce by nature, his high-headedness and bickering nature have caused terror to the public of the area, he is not afraid of the police, his activities are antisocial, he always keeps with him a knife and a revolver and he threatens surrounding people. After noticing the allegations as aforesaid it has been observed by the Supreme Court in para 18 of the judgment that the Detaining Authority had failed to substantiate that the alleged antisocial activities of the petitioner adversely affect or were likely to affect adversely the maintenance of public order. The Supreme Court has also observed that some incidents of beating by the petitioner had taken place, as alleged by the witnesses but such incidents, do not have any bearing on the maintenance of public order. The petitioner could be punished for the alleged offences committed by him, but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of PASA Act unless his activities as bootlegger affected adversely or are likely to affect adversely the maintenance of public order. The Supreme Court has found that such allegation do not give rise to the question of maintenance of public order and the order of detention was therefore not upheld.

In Amrat R. Vaghari Vs. Commissioner of Police (Supra) Bench of this Court considered the allegation that the petitioner in that case was a bootlegger and indulging in using force and beating people and that barring some stray, isolated and minor incidents activities alleged against him could not be said to have created insecurity or panic in general public and the detention was not found to be proper. Reliance was placed on the cases of Piyush Kantilal Mehta (Supra), and Mustakmiya (Supra) and it was also held that no distinction could be drawn for the obvious reason that the liquor whether country made or foreign-made, have the same implications for the purpose of subjective satisfaction. It has been observed that the liquor country made or foreign-made have the same implications on the health of the general public if taken in a

particular fashion or quantity and say of a contraband liquor, either it is a country-made liquor or is a foreign-made liquor makes no difference whatsoever so far as the society as a whole is concerned and that this distinction does not appeal to be genuine one so as to countenance the taking of a different view than what has been taken by the Supreme Court in the case of Piyush Kantilal Mehta (Supra). These observations with regard to country made liquor and foreign made liquor were made by the Court because the case of Piyush Kantilal Mehta (Supra) was sought to be distinguished on the ground that in Piyush Kantila Mehta's case the liquor in question was foreign liquor whereas in the case of Amrat Rambhai Vaghari (Supra) the liquor in question was a country made liquor. In Shamjibhai Manjibhai Patel's case (Supra) the Division Bench of this Court had considered the question of maintenance of public order vis-a-vis the question of maintenance of law and order. With reference to several cases decided by the Supreme Court in para 13 it has been observed by the Division Bench that as per law laid down by the Supreme Court, it follows that it is the degree and the extent of the reach of the objectionable activity upon the society, which is vital for considering the question whether a man has committed only a breach of 'Law and order' or has acted in a manner likely to cause disturbance to 'Public Order' and that facts of each case shall have to be carefully scrutinised to test the validity of an order of detention. In this case the allegation against the detenu was that witness had gone to Pan-Biri shop and the petitioner-detenu who was drunk had come there on Hero Honda Motor Cycle, with a Hockey and he had indulged in eve teasing and on questioning by the witnesses, he was enraged and had assaulted upon the witness and had firstly given 2 or 3 fist blows and later on had given hockey blows on his back and at that time a crowd of about 100 to 200 people had collected there and the members of the crowd were threatened and further that because of this incident, the shops were closed down and there was a traffic jam and the people in the surrounding area were scared. Another witness had also made allegation on the same line and had referred to an incident which had allegedly taken place before about five days at about 9.00 p.m According to this witness while he was closing his shop for the day and at that time, the petitioner detenu approached him and had tried to extort some money from him and on his refusal, he was assaulted upon and thereafter the petitioner-detenu had tried to take some money from his pocket and later on the petitioner-detenu had tried to inflict some injuries on his person by the razor. At that time a crowd of about 100 people came to be collected, the members of which

were also threatened and the nearby shops were closed down. Third witness had stated that on 23.9.1991 the witness was intercepted by the petitioner-detenu charging the witness as police agent, the detenu tried to inflict injuries on the person of the witness by the dagger and because of this incident a crowd of 50 to 100 people was collected and petitioner-detenu had threatened the members of the crowd as a result of which the shutters of the shops were dropped down and there was a scare and panic in the nearby area. Fourth witness had also stated on the very same line. According to this witness the petitioner detenu had travelled by the Auto-rickshaw of the witness and on demanding the fare, the petitioner-detenu had taken out Rampuri Knife as a result of which a crowd was collected, the shops were closed down, the traffic had jammed and the people were scared. After narrating these allegations, the Division Bench has observed in para 20 that even if the above said allegations are accepted on their face value it was impossible to come to the conclusion that the abovesaid activities had a reach on the public order situation.

In the case of Mustakmiya Jabbarmiya Shaikh Vs. M.M.Mehta (Supra) the allegations against the detenu were that he was habitually indulging in criminal and antisocial activities in the area of Shahpur, Patwaheri area of Teen Darwaja and Sardar Garden area of Ahmedabad City by keeping firearms, beating and assaulting innocent citizens in public and creating an atmosphere of fear and terror in the said area. It has been alleged that the four witnesses have stated in their statement that the detenu-petitioner is a headstrong, fierce and habitual criminal and, therefore, nobody comes forward to complain against him and the said witnesses have made a request not to disclose their names and identity for fear of the petitioner and, therefore, the names and identity of the witnesses have not been disclosed in public interest under section 9(2) of the Act. Five cases showing criminal activities of the petitioner were mentioned with date and time, place of offence, Cr.No., nature of the offence etc., the Supreme Court noticed that as per the grounds and the detention order and the first incident the petitioner and his associates are alleged to have dragged out the complainant from inside the Hair Cutting Saloon of Shahpur and associates of the petitioner fired four rounds from the revolver injuring the complainant and one another customer. The Supreme Court noticed that a day prior to this incident there has been some quarrel between the petitioner-detenu and complainant Mohd.Sussain and that criminal activity was directed against individual and it was difficult to assume that it

gave rise to public order disturbing the tranquility of the locality. At the most it was a criminal act directed only against an individual which has nothing to do with the question of public order. Such incident noticed by the Supreme Court in this case was that the petitioner detenu was harbouring an offender which was an offence under section 212/214 of the IPC and it should not be made any basis for passing the order of detention and this offence under Chapter XI of the Indian Penal Code and not under any of the Chapter XVI or XVII which was a requirement of section 2(c) of the Act. Therefore, this incident could not make the basis. The Supreme Court has also noticed the criminal activities of the petitioner-detenu in which he had purchased goods worth Rs.500/- from a businessman and on the demand of the price of the goods, the petitioner was alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. It was further alleged that the petitioner-detenu had disturbed the witness on the road and beaten him because the petitioner doubted that he was informing the police about the antisocial activities of the petitioner. The petitioner was also alleged to have rushed towards people gathered there with revolver. Taking the aforesaid incidents and the allegations on their face value the Supreme Court found that it was difficult to comprehend that they were the incidents involving public order. It has been observed that such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardise the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. Act by itself is not determinant of its own gravity but it is the potentiality of the act which matters. For this reason the petition was allowed and the order of detention was quashed and the petitioner-detenu was directed to be released forthwith.

In an unreported decision rendered by the learned Single Judge on 23.8.1996, the reliance has been placed on Mustakmiya Jabharmiya Shaikh's case (Supra). It has been observed that there is a marked difference between the detenu's conduct showing that he is habitually engaged in antisocial activities which can be said to be affecting law and order situation and the detenu's conduct showing that he is habitually engaged in the antisocial activities, which can be said to be prejudicial to the maintenance of public order. It was noticed that certain criminal cases were registered against petitioner under Prohibition Act. The petitioner

was stamped as bootlegger but it was held that it was a case of individual incident of affecting law and order and the detenu's conduct would not amount to leading to a conclusion that the same would affect public order.

As against it, in the case of Gopal Gangaram Nepali rendered in Special Civil Application No. 1432 of 1996 decided on 29.3.1996, and relied upon by Mr. Shukla, learned Assistant Public Prosecutor the Court noticed that to brand the petitioner as bootlegger the authority had relied on as many as six cases registered under the Bombay Prohibition Act, of which three were pending investigation. The petitioner was found to be carrying his activities to store, possess and sell liquor and statements of four witnesses were relied upon. The Court considered the question as to whether the statements of the witnesses did not disclose the activity which can be said to have affected the public order? In the facts of this case, the Court came to the conclusion that if a person is carrying on such activities continuously or repeatedly, it becomes his occupation and what is required under the law of detention is that activity should be prejudicial to the maintenance of public order. The Court found that the offences were registered against the detenu and the statements of the witnesses suggested that detenu had taken over the occupation of dealing in liquor and carrying out the same uninterruptedly. The Court expressed that this activity amounts to affecting the public order. The Court has observed that it is to be considered in each case whether the activity affects the public order and support has been sought to be taken from the observations made in the case of Mrs. Harpreet Kaur Vs. State of Maharashtra [AIR 1992 SC P.979].and Smt. Victoria Fernande's case (AIR 1992 S.C.Pg.687] In this case the petition was found to be devoid of any merit and the same was dismissed and the Court did not interfere with the detention order.

Now analysis of all these cases show that the dimensions of the public order and law and order are of marked difference and whether it is a case of breach of law and order or the case affecting public order has to be decided on the facts and circumstances of each case.

The touch stone to test the breach of public order or the activities prejudicial to it, is the nature of antisocial activities exceeding the breach of law and order so as to cross the limits of criminal and unlawful activities against an individual or individuals, to militate against the public in general and community or

society as a whole, adversely affecting the even tempo of the society, posing a threat to the very existence and normal and routine life of the people at large, putting the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law.

The comparison of the material and the allegations in the present case and the allegations which have been considered by the Supreme Court in various cases and the Division Bench as referred in the earlier part of the judgment clearly indicates that in the present case the allegations cannot be said to constitute the case of breach of public order and it is found to be a case of breach of law and order only. In certain cases the allegations before the Supreme Court were even much more serious than the allegations levelled against the present petitioner detenu. The law is settled that unless the allegations and the material is germane to the question of public order, it can't be taken to be a material to form an opinion for the purpose of passing detention order. Any criterion or any ground which is not germane to the requirement of the public order is extraneous for the purpose of passing the order of detention. The Detaining Authority is therefore supposed to address itself to those aspects and that part of the material which may lead to the formation of the subjective satisfaction with reference to norms of public order keeping the grounds of breach of law and order apart. Unless and until the grounds of detention show that the Detaining Authority has applied its mind so as to form an opinion with regard to breach of public order keeping in mind the distinction between two terms i.e. public order and law and order it cannot be said that the order has been passed with active application of mind to the considerations which are relevant and germane to the public order. In the facts of this case on the comparison of the present case with the allegations in several cases of the Supreme Court and Division Bench of this Court, I am satisfied that in the present case there was no material which could be said to constitute a case of breach of public order against the present detenu-petitioner. Unreported decision in Special Civil Application No. 1432 of 1996 decided on 29.3.1996 on which the reliance has been placed by Mr. Shukla has been decided on its own facts and the Court has found that it was a case of breach of public order and for that reason the detention order was not interfered with and therefore that decision, in my opinion, cannot be of any help to the respondents more particularly in view of the law laid

down by the Apex Court in umpteen number of cases as also by the Division Bench of this Court.

Upshot of the aforesaid discussion is that this Special Civil Application succeeds. The order of detention dated 12.4.1996 is hereby quashed and set aside and it is directed that the petitioner-detenu be set at liberty forthwith, if not required in any other case. Rule is hereby made absolute.
